



Legal Update

September 18, 2014

An Act to Reduce Gun Violence

Chapter 284 of the Acts of 2014: On August 13, 2014, the Governor signed into law **H. 4376** “*An Act to Reduce Gun Violence H. 4376.*” This new legislation takes effect immediately. There are some changes that will not be rolled out until 2021. The key aspects of the bill are listed are below. Aspects of the bill not only impacts policing, but also add provisions for schools and firearms dealers.

New Offenses

Assault and Battery by a firearm

M.G.L. c. 265, § 15D – Whoever commits an Assault & Battery By Means of Discharging a Firearm, sawed-off shotgun or machine gun as defined in M.G.L. c. 140, §121.

Right of Arrest: Felony

Penalty: 20 year state prison or not more than 2 ½ in HOC or fine of 10k or both. (Effective January 1, 2015)

Assault by a firearm

M.G. L. c. 265, § 15E – Whoever attempts to commit an assault and battery upon another by means of discharging a firearm, rifle or shotgun, sawed-off shotgun or machine gun as defined in M.G.L. c. 140, §121.

Right of Arrest: Felony

Penalty: 15 year state prison or not more than 2 ½ in HOC or fine of 10k or both. (Effective January 1, 2015)

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department’s legal advisor or prosecutor.

Deceptive Weapon

M.G.L. c. 265, § 58 - Anyone in possession of a “deceptive weapon device” (defined in c. 140, § 121 as a weapon intended to convey the presence of a firearm, used in the commission of a violent crime and presenting an objective threat of immediate death or serious bodily harm to a person of reasonable and average sensibility) shall be deemed to be armed. (Effective immediately in part and Section 87 effective January 1, 2015)

Disarming Police Officer

M.G.L. 265, § 13D - Attempt to disarm a police officer in performance of the officer’s duties and it does not specify whether this related only to firearm or if it includes any weapons carried by law enforcement.

Right of Arrest: Felony

Penalty: shall be imprisoned for not more than 10 years or by a fine of \$1000 or imprisoned in HOC for not more than 2 1/2 years.

Effective: January 1, 2015

Enhanced Penalties

Carjacking Penalty

M.G.L. c. 265, § 21A Increases penalty for carjacking while armed with a firearm from imprisonment from 5 years to imprisonment from **7 years** (Effective January 1, 2015)

Transporting Firearms into Commonwealth

M.G.L. 269, § 10I - Transporting a firearm, rifle, shotgun, machine gun or sawed off shotgun into the Commonwealth.

Penalty: (i) for the commission of criminal activity, 10 year felony, minimum 5 years.

(ii) to unlawfully distribute, sell or transfer to a prohibited person , (see definition for gun license prohibited person above), AND the weapon is subsequently used to cause the death of another, 20 year minimum prison sentence;

Breaking and Entering into building, ship, vessel or vehicle

M.G.L. 266, § 17 - Minimum mandatory sentences added if armed with a firearm, rifle, shotgun, machine gun or assault weapon while committing a B&E and placing a person lawfully there in fear.

Penalty: state prison of not less than 7 years or HOC for not less than 2 years NMT 2 1/2 years (Effective January 1, 2015)

M.G.L. 266, § 18 - Minimum mandatory sentences added if armed with a firearm, rifle, shotgun, machine gun or assault weapon while committing a B&E and no one put in fear.

Penalty: State prison not less than 7 years or HOC not less than 2 years or more than 2 1/2 years. (Effective January 1, 2015)

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department’s legal advisor or prosecutor.

Dangerous Weapons on School Grounds

M.G.L. 269, § 10(j) – Whoever not being law enforcement carries on his or her person a firearm, loaded or unloaded or other dangerous weapon in any building on the grounds of any elementary or secondary school, college or university without written authorization of the board or person in charge.

According to the definition, firearm shall mean any pistol, revolver, rifle or smoothbore arm from which a hot, bullet or pellet can be discharged.

- allows police to make warrantless arrest and to detain person in violation of carrying **a firearm** on school grounds without written authorization.

Penalty: Not more than 2 years or a fine \$1000 or both. (Effective January 1, 2015)

Trafficking Firearms

M.G.L. 269, § 10E - Completely replaced this section with a section containing changes for definitions, penalties and minimum mandatory sentences for firearms trafficking.

Categories of Firearms Sold by Number:

1. Illegal sale of 1 to less than 3 Firearms

Penalty: Punishable by state prison not more than 10 years, or a fine of not more than \$5,000, both;

2. 3 Firearms sold but less than 10

Penalty: state prison not more than 20 years with 5-year mandatory minimum, and fine of not more than \$100,000;

3. More than 10 Firearms

Penalty: Punishable by up to life imprisonment with mandatory minimum of 10 years, and fine of not more than \$150,000. No eligibility for probation, parole or release until mandatory minimums

Illegally Transporting Firearms for Criminal Activity

M.G.L. 269, § 10I (a) – Whoever transports a firearm, rifle, shotgun, machine gun or sawed off shotgun into the Commonwealth to use the weapon for commission of criminal activity.

Right of Arrest: Felony

Penalty: state prison for not less than 5 years not more than 10 years.

Illegally Transporting Firearms for Unlawful Distribution

M.G.L. 269, § 10I (b) – Whoever transports a firearm, rifle, shotgun, machine gun or sawed off shotgun into the Commonwealth to unlawfully distribute, sell or transfer possession of the weapon to a prohibited person as defined in M. G.L. c. 140, § 131.

Right of Arrest: Felony

Penalty: state prison for not less 20 years.

Illegally Transporting Firearms for Unlawful Transfer resulting in Death

M.G.L. 269, § 10I (c) – Whoever transports a firearm, rifle, shotgun, machine gun or sawed off shotgun into the Commonwealth to unlawfully distribute, sell or transfer possession of the weapon to a prohibited person as defined in M. G.L. c. 140, § 131 and if weapon is subsequently used to cause death of another.

Right of Arrest: Felony

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

Penalty: state prison for not less 20 years.

Offenses involving breaking and entering to steal a firearm

M.G.L. 269, § 10J (a): Whoever breaks in enters into the nighttime or daytime into a building, ship, vessel or vehicle for the purpose of stealing a firearm.

Right of Arrest: Felony

Penalty: not more than 5 years or 2½ years HOC or fine of \$10,000, or both;

Offenses involving breaking and entering to steal a firearm and distribute to a prohibited person

M.G.L. 269, § 10J (b): Whoever breaks in enters into the nighttime or daytime into a building, ship, vessel or vehicle for the purpose of stealing a firearm so that he or she may distribute the firearm to a prohibited person as defined in M. G.L. c. 140, § 131.

Right of Arrest: Felony

Penalty: not more than 10 years or HOC not more than 2 ½ years, or a fine not more than \$10,000, or both;

Offenses involving breaking and entering to steal a firearm and in the process causes injury to another

M.G.L. 269, § 10J (c): Whoever breaks in enters into the nighttime or daytime into a building, ship, vessel or vehicle for the purpose of stealing a firearm and in the process injures another.

Right of arrest: felony

Penalty: State prison not more than 10 years or HOC not more than 2½ years, fine of \$10,000, or both. Also provides that any motor vehicle lawfully owned or operated by any person convicted of § 10J be forfeited pursuant to c. 90, §24W with the proceeds to go to the Public Safety Training Fund. (Effective January 1, 2015) M. G.L. c. 140, § 131 (c).

Breaking or Entering (day or night) into a building of a firearms retailer, wholesaler or manufacturer business.

M.G.L. 269, § 10K (a) Whoever in the nighttime or daytime breaks or enters into a building of a firearms retailer, wholesaler or manufacturer business.

Right of Arrest: Felony

Penalty: 10 years not more than or HOC 2½ years or fine \$10,000 K or both

Breaking or Entering (day or night) into a building of a firearms retailer, wholesaler or manufacturer business to steal firearms or ammunition.

M.G.L. 269, § 10K (b) Whoever in the nighttime or daytime breaks or enters into a building of a firearms retailer, wholesaler or manufacturer business to steal firearms or ammunition.

Right of Arrest: Felony

Penalty: 20 years not more than or HOC 2½ years or fine \$10,000 K or both
(Effective January 1, 2015)

Breaking or Entering (day or night) into a building of a firearms retailer, wholesaler or manufacturer business for theft or distribution.

M.G.L. 269, § 10K (c) Whoever in the nighttime or daytime breaks or enters into a building of a firearms retailer, wholesaler or manufacturer business and whoever unlawfully distributes firearms, rifle, shotgun, machine gun or ammunition.

Right of Arrest: Felony

Penalty: 20 years not more than or HOC 2½ years or fine \$10,000 K or both

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

Failure to report any lost or stolen firearms

M.G.L. c. 140, § 128: Failure to report immediately any lost or stolen firearms to the licensing authority and Executive Director of CJIS. (Effective January 1, 2015)

M.G. L. c. 140, § 129C: failure to report lost or stolen firearms 3rd or subsequent offense

Penalty: No less than a year in imprisonment but not more than 5 years or a fine of \$7500 but not more than \$1000.

Additions for Licenses

M.G.L. c. 140, § 130 ½ - Can furnish weapon to minor for hunting, recreation, instruction and participation in shooting sports while under supervision of holder of valid FID card or license to carry, as long as minor has parent's consent.

Improper Storage of Firearms

M.G.L. c. 140, § 131L – Penalties and fines have increased for both the misdemeanor and felony versions involving this offense. (Effective January 1, 2015)

Exemptions for Police Regarding Large Capacity Weapons

Police officers are now exempt from the prohibition on large capacity magazines or assault weapons not lawfully possessed in 1994. This new change exempts "the possession by a law enforcement officer." The previous version exempted "the possession by a law enforcement officer for purposes of law enforcement."

New Definition for Ammunition

FID cards are not required for person carrying **self-defense spray** (chemical mace, pepper spray, etc.)

Self Defense Spray:

Definition: pursuant to M.G.L. c. 140, Section 122C "chemical mace, pepper spray or any device or instrument which contains, propels or emits a liquid, gas, powder or other substance designed to incapacitate, is now referred to as "self defense spray."

Requirements: A person over 18 does not need an FID card to possess or purchase self-defense spray. Firearms dealers shall verify age of person buying spray.

Violations Involving Self Defense Spray

Selling self defense spray (includes chemical mace, pepper spray etc.) without a firearms dealers license

M. G.L. c. 140, § 122C(b)

Right of Arrest: Misdemeanor summons

Penalty: Not more than two years in HOC or a fine of \$1000.

Self Defense Spray Violations Involving Minors

a. Selling self defense spray (includes chemical mace, pepper spray etc.) to a person under age 18 and does not have a FID card

M.G.L. c. 140, § 122C(c)

Penalty: \$300 fine

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b. Minor possessing self defense spray with not FID card

M. G.L. c. 140, § 122C(d)

Penalty: \$300 fine

Unsuitable person unlawfully possessing self defense spray

M. G.L. c. 140, § 122D

Right of Arrest: Misdemeanor summons

Penalty: Not more than two years in HOC or a fine of \$1000.

License to Carry:

New License Disqualifications

New definition for gun licenses of "**PROHIBITED PERSON**" in M.G.L.c 140. When referring to gun licenses see what is used in c. 269 and when referring to FID or self-defense spray see what it is in bold.

Statutory disqualifications include the following if in Massachusetts or another state:

- a. convicted or adjudicated a youthful offender or delinquent child, or both as defined in section 52 of chapter 119, for the commission of: (a) a felony; (b) a misdemeanor punishable by imprisonment for more than 2 years ; (c) a violent crime as defined in section 121; (d) a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed; (e) a violation of any law regulating the use, possession or sale of controlled substances, as defined in section 1 of chapter 94C, including, but not limited to, a violation under said chapter 94C; **(for FID card and self defense spray only, ignore anything older than 5 years after last adjudication or release from confinement, probation or parole)** or (f) a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921(a)(33) **(doesn't apply to self defense spray)**;
- b. anyone who is or has been (a) committed to a hospital or institution for mental illness, alcohol or substance abuse, except a commitment (after 5 years, can get doctor's note) (b) committed by a court order to a hospital or institution for mental illness, unless the applicant was granted a petition for relief of the court (c) subject to an order of the probate court appointing a guardian or conservator for a incapacitated person on the grounds that the applicant lacks the mental capacity to contract or manage the applicant's affairs, unless the applicant was granted a petition for relief of the order of the probate court (d) found to be a person with an alcohol use disorder or substance use disorder or both and committed pursuant to said section 35 of said chapter 123, unless the applicant was granted a petition for relief of the court order;
- c. is under 21 years old;
- d. is an unlawful alien;
- e. is currently subject to a chapter 209A or similar order from another jurisdiction;
- f. is currently the subject of an outstanding arrest warrant;
- g. is a fugitive from justice; or

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- h. anyone who was a U.S. citizen and renounced that citizenship

Issuing LTC: The new law eliminates the distinction between Class A and Class B LTC but will not become effective until January 2021.

- a. **Suspension/ Revocation:** Same process as before.
- b. **Appeals/Petition:** 15-day period to find evidence of what person is not suitable to have a LTC. After action taken by Licensing Authority, person can file a petition with the court, which should render a decision within 75 days.
- c. **Return of Firearms:** After 180 days, if owner of firearm is not located, Licensing Authority can dispose of unclaimed firearms by selling or transferring to a licensed dealer or destroying the firearms.

IMPACT ON LICENSING AUTHORITY

New Licensing structure: Effective January 1, 2021, there will be no distinction between eliminates Class A and Class B LTC.

Court petition for FID suitability: The Licensing Authority can now petition the district court in writing *before* it denies, suspends, or revokes an FID card for suitability. The licensing authority must specify the reasons for its determination and the court.

M.G.L. c 140, Section 129B:

The licensing authority may file a petition to request that an applicant be denied the issuance or renewal of a firearm identification card, or to suspend or revoke such a card in the district court of jurisdiction. If the licensing authority files a petition, the licensing authority must provide written notice to the applicant describing the specific evidence in the petition within 7 days. The petition must include a written statement of the reasons detailing why the person is unsuitable to possess a firearms identification card.

(b) The court shall within 90 days hold a hearing to determine if the applicant is unsuitable. Such a petition shall serve to stay the issuance or renewal of the firearm identification card pending a judicial determination on such petition.

(c) Upon the filing of a petition to suspend or revoke a firearm identification card, the court shall within 15 days determine whether there is sufficient evidence to support a finding that the applicant is unsuitable. Such petition shall serve to effect the suspension or revocation pending a judicial determination on the sufficiency of evidence. If a court determines that insufficient evidence exists to support a finding of unsuitability, the licensing authority shall not file a petition under this subsection for the same applicant within 75 days of the licensing authority's previous petition for that applicant. If a court determines that sufficient evidence exists to support a finding of unsuitability, the court shall within 75 days hold a hearing to determine if the applicant is unsuitable under subsection

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(d); provided, however, that such initial suspension or revocation shall remain in effect pending a judicial determination thereon.

(d) A determination of unsuitability shall be based on a preponderance of evidence that there exists:

- (i) reliable, articulable, and credible information that the applicant has exhibited or engaged in behavior to suggest the applicant could potentially create a risk to public safety; or
- (ii) existing factors that suggest that the applicant could potentially create a risk to public safety.

If a court enters a judgment that an applicant is unsuitable the court shall notify the applicant in a writing setting forth the specific reasons for such determination. If a court has not entered a judgment that an applicant is unsuitable under this clause within 90 days for petitions under clause (ii) or within 75 days under clause (iii), the court shall enter a judgment that the applicant is suitable for the purposes of this paragraph.

Extension of license expiration for renewals submitted before expiration

A firearm identification card shall be valid, unless revoked or suspended, for a period of not more than 6 years from the date of issuance, except that if the cardholder applied for renewal before the card expired, the card shall remain valid after the expiration date on the card for all lawful purposes, until the application for renewal is approved or denied.

Exemptions for military persons:

Anyone on active duty with the armed forces of the United States on the expiration date of the card, the card shall remain valid until the cardholder is released from active duty and for a period of not less than 180 days following such release, except that if the cardholder applied for renewal prior to the end of such period, the card shall remain valid after the expiration date on the card for all lawful purposes, until the application for renewal is approved or denied. A card issued on February 29 shall expire on March 1. The commissioner of criminal justice information services shall send electronically or by first class mail to the holder of a firearm identification card, a notice of the expiration of the card not less than 90 days before its expiration and shall enclose with the notice a form for the renewal of the card.

REQUIREMENTS FOR POLICE RELATING TO SCHOOLS

Safe School Framework: Every chief of police subject to appropriation shall assign at least 1 school resource officer (hereinafter referred to as “SRO”) to serve the city, town, a commonwealth charter school, regional school district or county agricultural school subject to appropriation. Candidates considered for a SRO assignment shall be assigned not based on seniority but rather for a person whom is most qualified and will strive to provide an optimal learning environment. Each year the SRO will be subject to review.

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Added provisions related to schools

- a. **“Two-way communication device”**: Schools can use this device for communicating with police and fire departments of the city or town where the school is located during an emergency situation.
- b. **Annual Plan**: Schools shall develop **School Action Plans** and submit to police and emergency personnel highlighting points of ingress and egress. These plans shall be developed in consultation with the principal, school nurse, school athletic director, team physicians, coaches, trainers and local police, fire and emergency personnel, as appropriate. Schools shall practice the response sequence at the beginning of each school year and periodically throughout the year and evaluate and modify the plan as necessary. School officials shall review the response sequence with local fire and police officials at least 1 time each year and shall conduct periodic walk-throughs of school campuses. Plans shall be submitted once every 3 years to the department of elementary and secondary education, the local police department and the local fire department not later than September 1. Plans shall be updated in the event of new construction or physical changes to the school campus as determined by the local police department.

IMPACT UPON FIREARMS DEALERS

Suicide Awareness Provision: All dealers are required to post information about suicide prevention at counter of firearms dealers.

CORI checks: CORI checks mandated before dealer employs anyone “direct and unmonitored” contact with firearms. Effective **February 16, 2015**, dealers will have to run CORI checks on all employees by the date listed above.

Data requirements: Massachusetts must submit data to the federal National Instant Check System, regarding state commitments for alcohol and/or substance abuse commitments for mental illness or as dangerous persons, and convictions for domestic violence cases.

Purchases/sales or transfers of firearms: Requires personal sales/transfers of all firearms, rifles, and shotguns to be completed through a **web portal** to be developed by the **Department of Criminal Justice Information Services**. The identity of both buyer and seller will be tracked to ensure that the sale/transfer complies with the federal law.

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